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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15
16 UNITED STATES OF AMERICA,) Case No. CR 24-00329 CRB
17 Plaintiff,) CONSENT MOTION FOR ENTRY OF ORDER
18 v.) PURSUANT TO FEDERAL RULE OF EVIDENCE
19 RUTHIA HE, A/K/A RUJIA HE, and DAVID) 502(d)
20 BRODY,) DATE: October 2, 2024
21 Defendants.) TIME: 1:30 PM
22) CTRM: Courtroom 6 – 17th Floor
23) JUDGE: Hon. Charles R. Breyer

24 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

25 PLEASE TAKE NOTICE that on October 2, 2024, at 1:30 p.m., or as soon thereafter as the
matter may be heard in the courtroom of the Honorable Charles R. Breyer, Senior United States District
26 Judge, located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom 6, 17th Floor,
27 the United States, by and through its undersigned counsel of record, *i.e.*, the designated filter team (“Filter

1 Team") will, and hereby does, move the Court entry of an order pursuant to Federal Rule of Evidence
 2 502(d). In support of this Motion, the Filter Team states as follows:

3 1. On July 22, 2024, the Court entered a Stipulated Protective Order [ECF No. 38].

4 2. The Government has obtained material discoverable in this case through various grand jury
 5 subpoenas issued to third parties and other means, including certain Potentially Protected Material¹ over
 6 which third parties Done Global Inc. and/or Done Health P.C. (together, "Done" or "Third Party Privilege
 7 Claimant") may hold a privilege.

8 3. The relevant Potentially Protected Material (the "Done PPM") consists of 387 documents
 9 produced by Done in response to a grand jury subpoena and pursuant to a Non-Waiver and Inadvertent
 10 Disclosure Agreement with the Government, and over which Done, after producing the material to the
 11 Government in response to the subpoena, subsequently asserted a privilege or protection. The United
 12 States Filter Team² has segregated the Done PPM from the Prosecution Team. The Bates numbers of the
 13 Done PPM documents are listed in Exhibit 1 to this Motion.

14 4. To avoid protracted litigation over the Third-Party Privilege Claimant's privilege claims in
 15 this matter an expedite discovery productions to Defendants He and Brody, the United States Filter Team
 16 and the Third-Party Privilege Claimant agree to the following:

17 a. The Third-Party Privilege Claimant expressly authorizes the United States Filter Team
 18 to release the Done PPM to Defendants He and Brody.

19 b. The United States Filter Team will not release to the Government Prosecution Team or
 20 any other party the Done PPM, except as authorized by the Court or expressly permitted
 21 by the Third-Party Privilege Claimant.

22 c. Pursuant to Federal Rule of Evidence 502(d), the attorney-client privilege and other
 23 privileges or protections are not waived by disclosure connected with the litigation

24 ¹ "Potentially Protected Material" is discovery material that is potentially protected from disclosure
 25 by the attorney-client privilege, work-product doctrine, or any other legally recognized privilege or
 26 protection. This includes, but is not limited to, material over which a potential privilege holder has asserted
 27 a specific claim of attorney-client privilege, work-product doctrine, or any other legally recognized
 28 privilege or protection, but over which a Court has not yet ruled.

² The United States Filter Team may not share a first-level supervisor with anyone on the
 29 investigative/prosecution team (the "Prosecution Team"). Any supervisor involved in the Filter Team's
 28 review will be walled off from the underlying investigation.

1 pending before the Court, nor constitute waiver in this proceeding or any other federal or
2 state proceeding. Nothing in this Order precludes the Third-Party Privilege Claimant
3 from asserting privilege claims over the disclosed materials in this proceeding or in any
4 future proceedings in federal or state court.

5 d. The Government reserves its rights to contest Third-Party Privilege Claimant's privilege
6 assertions over the Done PPM at any time. However, the United States Filter Team's
7 production of Done PPM to the Defendants will not be construed as a waiver as to the
8 Government or any other party, and the Government agrees that it will not claim the
9 United States Filter Team's production of Done PPM to Defendants operated as a waiver.

10 e. In the event the Third-Party Privilege Claimant seeks to withhold or limit Defendants'
11 use of the Done PPM at a future point on the basis of the attorney-client privilege, the
12 attorney work product protection, or any other privilege or protection, Defendants reserve
13 their rights to contest those assertions at that time.

14 6. The Done PPM shall be subject to the Stipulated Protective Order [ECF No. 38].

15 7. Undersigned counsel conferred via email with counsel for Defendants He and Brody, and they
16 consent to the relief requested in this Motion.

17 8. From September 7, 2024, through September 16, 2024, undersigned counsel conferred via
18 email with counsel for the Third-Party Privilege Claimant. On September 16, 2024,
19 undersigned counsel and counsel for the Third-Party Privilege Claimant reached agreement on
20 the Motion and Proposed Order.

21 Accordingly, the United States Filter Team respectfully requests that this Consent Motion be
22 granted and that the Court issue an order pursuant to Federal Rule of Evidence 502(d) for the relief
23 requested herein.

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2 DATED: September 18, 2024

Respectfully submitted,

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6 MATTHEW M. YELOVICH
Attorney for the United States

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GLENN S. LEON
Chief, Fraud Section
U.S. Department of Justice

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/s/
EVAN SCHLOM
Trial Attorney